

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 1:CR-05-066-01
	:	
	:	
v.	:	
	:	
	:	
ARMANDO LOPEZ-PORTILLO	:	

MEMORANDUM AND ORDER

Before the court is Defendant's motion requesting transcripts *in forma pauperis* for the preparation of a motion pursuant to 28 U.S.C. § 2255. Defendant claims that he intends to raise in such a motion the following issues: (1) *Blakely v. Washington*¹ issues; (2) violation of the plea agreement; and (3) violation of the Sixth Amendment.

Federal sentencing claims are now addressed by *Booker v. United States*, ___ U.S. ___, 125 S. Ct. 738 (2005), which address similar issues to *Blakely* but concern federal sentencing as opposed to sentencing issues in the state of Washington. *Booker* issues cannot be raised retroactively to cases on collateral review. *In re Olepade*, 403 F.3d 159, 162 (3d Cir. 2005). Therefore, the transcripts are not necessary since Defendant is barred from raising the issue.

¹542 U.S. ___, 124 S. Ct. 2531 (2004).

As to an alleged violation of the plea agreement, a copy of the agreement shall be furnished to Defendant along with a copy of this memorandum and order. Defendant does not need a transcript of the plea or sentencing proceedings to determine if there has been a violation of the plea agreement.

As to the alleged violation of the Sixth Amendment, the allegation is vague. Title 28 U.S.C. § 753(f) provides in pertinent part that “fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal *in forma pauperis* shall be paid by the United States out of money appropriated for that purpose *if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous . . .*” (Emphasis added.) Based on the motion presently before the court, such certification cannot be made by this court.

IT IS THEREFORE ORDERED THAT:

- 1) The motion for transcripts is **DENIED** without prejudice.
- 2) The Clerk of Court shall send a copy of the plea agreement in this case to Petitioner along with a copy of this memorandum and order.

s/Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: September 28, 2005.